



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TE/GE: EO Examinations

625 Fulton Street, Room 503

Brooklyn, NY 11201

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

November 28, 2008

Number: 200909065

Release Date: 2/27/2009

UIL:501.03-01

LEGEND

ORG = Organization name

XX = Date

Address = address

ORG

ADDRESS

Taxpayer Identification Number:

Person to Contact:

Identification Number:

Contact Telephone Number:

**LAST DATE FOR FILING A PLEADING WITH THE TAX COURT, THE
CLAIMS, COURT, OR THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA: February 26, 20XX**

CERTIFIED MAIL

Dear :

This is a final adverse determination regarding the exempt status of ORG. under section 501(c)(3) of the Internal Revenue Code (I.R.C.). The exempt status is hereby revoked effective January 1, 20XX.

I.R.C. section 501(a) provides that an organization organized and operated for a charitable purpose, listed under section 501(c)(3), is exempt from tax. To qualify for income tax exemption, under section 501(a) as a section 501(c)(3) organization, an organization must establish that it operates exclusively for charitable purposes.

Treasury Regulation 1.6033-2(i)(2) provides that an organization which is exempt from tax, regardless whether it is required to file an annual information return, shall submit, as required by the Internal Revenue Service, any additional information for the purpose of inquiring into its exempt status. ORG has failed to establish that it was operated for an exempt purpose by failing to provide to the Internal Revenue Service documents showing active charitable activities and by providing the Service with express written statements admitting that the organization has not been operating during the years at issue.

Contributions to your organization are no longer deductible under IRC §170 after January 1, 20XX.

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending December 31, 20XX and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to these courts at the following addresses:

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

We will notify the appropriate State Officials of this action, as required by Code section 6104(c). You should contact your State officials if you have any questions about how this final determination may affect your State responsibilities and requirements.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Vicki L. Hansen
Acting Director, EO Examinations

Enclosure:
Publication 892



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE: EO Examinations
1100 Commerce Street
Dallas, TX 75242

August 23, 2007

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear ,

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Marsha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

LEGEND

ORG = Organization name

XX = Date

XYZ = State

Bank = Bank

President = president

PRIMARY ISSUE:

Should the IRC section 501(c)(3) tax exempt status of the ORG be revoked because it is not operated exclusively for tax exempt purposes?

FACTS:

ORG (ORG) was incorporated in the State of XYZ on August 30, 20XX.

President, as the creator of ORG, assumed the titles of president, treasurer and secretary. President was also a director and the sole employee of ORG. There were eight directors listed when ORG was formed.

The purpose of ORG, as stated in the bylaws dated August 30, 20XX, was to sell certain merchandise and collect donations in order to purchase a memorial sculpture to donate to the City of XYZ in memory of those who died in the terrorist attacks on September 11, 20XX.

The yearly activities of ORG were to consist of contribution solicitations, sales of miniature replicas of the sculpture to be built, celebrity golf tournaments, and auctions of celebrity memorabilia.

ORG filed an application for Recognition for Exemption, Form 1023, on November 1, 20XX. They filed as an organization exempt under 501(a), as described in section 501(c)(3) of the Code with a foundation status of 509(a)(1). The purposes of ORG, as listed on the application were consistent with the purposes as stated in the bylaws.

ORG was issued a determination letter and received exempt status on December 23, 20XX as an organization under 501(a) of the Code, as described in IRC Section 501(c)(3). The foundation status was determined to be 509(a)(1) during the advance ruling period. After the advance ruling period ended, ORG was required to send in documentation showing that they were still publicly supported and entitled to foundation classification under 509(a)(1).

The advance ruling period ended December 31, 20XX. President did not send any documentation to the Service with regard to foundation status and has not received any documentation from the Service regarding foundation classification.

Research in the IRS databases shows that ORG filed a Form 990 for the periods ending December 31, 20XX and 20XX. An inspection of the Form 990 for the year ended December 31,

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20XX shows ORG received \$ in contributions from the general public and \$ gross revenue from conducting a golf tournament. The net income for the year was \$.

The Form 990 for the period ended December 31, 20XX was not available for inspection. ORG did not file a return for the years ended December 31, 20XX or 20XX.

In a June 15, 20XX telephone interview, President stated that ORG was inactive in 20XX, 20XX, 20XX, and in 20XX. President stated that for the period beginning in early 20XX through the present there were no activities conducted. There were revenues generated and no expenses paid. President also stated that there were no assets to maintain because all the income generated went out in the form of expenses.

President states in a June 24, 20XX letter that during the period of 20XX through 20XX, they "raised just enough money to continue raising money."

In a July 23, 20XX letter, President provides a statement that conflicts with June 24, 20XX letter by stating that ORG did not receive any contributions in 20XX or 20XX. In his July, 20XX letter, President further states that there has only been one organizational meeting held, and that was on November 12, 20XX, just prior to receiving tax exempt status. President could not provide written records for that one meeting.

President provided a bank statement for Bank that shows the ORG business bank account being closed as of December 31, 20XX. When that account was closed, ORG in essence did not have any assets beyond a broken computer and a box of T-shirts of nominal value.

The organization has not filed a return since the 20XX12 tax year. After reviewing the organization's records, they were not required to as they have not received any revenues since 20XX.

During the period of the examination from January 1, 20XX through December 31, 20XX, there are no Board of Director's minutes for any meetings and there are no records of any meetings of any kind. There were no elections for any board members. There are no documents of any kind for the years in question.

LAW:

Section 501(c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

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Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more purposes specified in that section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c) of the regulations specifies that with regard to the primary activities within the operational test, an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Revenue Ruling 72-369 states, in part, that in order for an organization to pass the operational test the organization's resources must be devoted to purposes that qualify as exclusively charitable.

GOVERNMENT'S POSITION:

The IRS section 501(c)(3) tax exempt status of ORG should be revoked, effective January 1, 20XX, because it is not operated exclusively for tax exempt purposes pursuant to the requirements set forth in section 1.501(c)(3)-1(c)(1) of the regulations.

ORG's lack of activities for over three years also stand in contrast to section 1.501(c)(3)-1(c)(1) of the regulations in that the lack of operations is evidence that there is no furtherance of any exempt purpose.

In contrast to section 1.501(c)(3)-1(d)(ii) of the regulations which calls for an organization to be organized and operated for a public rather than a private benefit, ORG has not operated or engaged in any charitable activities since the end of 20XX.

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Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

ORG does not pass the operational test as specified in section 1.501(c)(3)-1(c) of the regulations because the lack of activities means they were not operated exclusively for one or more exempt purposes. To be considered as operating exclusively for exempt purposes ORG would have had to engage primarily in activities which accomplish one or more of such exempt purposes as specified in section 501(c)(3) of the Code.

In addition to the lack of any charitable activity is the lack of any qualified activity at all. There were no meetings, no elections, no reports, no publications, and ORG's bank account was closed at the end of 20XX. There are no assets beyond a broken computer and a box of minimally valued T-shirts.

As ORG has not operated exclusively for charitable purposes for an extended period, the tax exempt status of ORG should be revoked.

TAXPAYER'S POSITION:

The taxpayer has agreed to revocation of exempt status effective to January 1, 20XX.

ALTERNATIVE ISSUE # 1: Should ORG be reclassified as a private foundation?

FACTS:

ORG (ORG) was incorporated in the State of XYZ on August 30, 20XX.

President, as the creator of ORG, assumed the titles of president, treasurer and secretary. President was also a director and the sole employee of ORG. There were eight directors listed when ORG was formed.

The purpose of ORG, as stated in the bylaws dated August 30, 20XX, was to sell certain merchandise and collect donations in order to purchase a memorial sculpture to donate to the City of XYZ in memory of those who died in the terrorist attacks on September 11, 20XX.

The yearly activities of ORG were to consist of contribution solicitations, sales of miniature replicas of the sculpture to be built, celebrity golf tournaments, and auctions of celebrity memorabilia.

For the period of January 1, 20XX through the year under examination, and into the present, ORG did not receive any contributions, did not hold any meetings, and did not operate in any manner.

LAW:

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

Section 509(a)(1), Section 509(a)(2), Section 509(a)(3), and Section 509(a)(4) of the Code:

An Internal Revenue Code Section 501(c)(3) organization that cannot meet the public support test of 509(a)(1) or 509(a)(2) but wishes to be classified as other than a private foundation must meet one of the three relationship tests as a supporting organization under Internal Revenue Code Section 509(a)(3). The relationship test is the primary test and without meeting the relationship test this foundation code can not be applied. The three possible relationships are as follows:

1. Operated, supervised or controlled by (Treasury Regulation 1.509(a)-4(g))
2. Supervised, or controlled in connection with (Treasury Regulation 1.509(a)-4(h))
3. Operated in connection with, one or more publicly supported organizations: Treasury Regulation 1.509(a)-4(i))

GOVERNMENT'S POSITION:

As set forth above, it is the government's primary position that the tax exempt status of ORG should be revoked. Alternatively, ORG should be reclassified as a private foundation.

ORG was created in 20XX and has not operated as a public charity since the end of 20XX. ORG does not receive any contributions or public support. As such, they do not qualify for foundation status under sections 509(a)(1) or 509(a)(2) of the Code.

ORG was neither operated, supervised, controlled by, nor supervised or controlled in connection with any specified beneficiary. Therefore, ORG does not meet the first two relationship tests as outlined in Treasury Regulation 1.509(a)-4(g)) and 1.509(a)-4(h)).

In order for ORG to pass the third relationship test it has to pass the responsiveness and integral part tests. As a result of the examination, ORG fails the third relationship test in that it was neither responsive nor an integral part, based on the following:

The first requirement of distributing substantially all of ORG's income is not satisfied due to the fact that ORG did not distribute any money or property to any supported organization. The second test that requires the amount of support to be sufficient to insure attentiveness is also not demonstrated by the fact that there were no designated supported organizations or distributions to any supported organization.

ORG fails to qualify for foundation status of section 509(a)(1), (2), (3) or (4) and does not operate exclusively for one or more exempt purposes within the meaning of Treas. Reg. 1.501(c)(3)-1(c). The dormant nature and lack of activity for the organization is evidence that more than an insubstantial part of its activities are not in furtherance of an exempt purpose.

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Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

If revocation of exempt status is not achieved, then ORG should be reclassified as a private foundation as they fail to qualify for any foundation status as described in section 509(a) of the Code.

TAXPAYER'S POSITION:

The taxpayer has agreed to revocation of exempt status effective January 1, 20XX.

CONCLUSION:

ORG does not qualify for tax exempt status under IRC section 501(a) as described in section 501(c)(3) of the Code. The lack of any qualified activity indicates that this organization should not be allowed to continue as a tax exempt organization. Revocation of the tax exempt status of ORG is proposed with an effective date of January 1, 20XX.

Alternately, ORG should be reclassified as an organization that is a private foundation as defined in section 509(a) of the Code.

A closing conference was held by telephone with President, president of ORG on August 23, 20XX.